S.B. CIVIL WRIT PETITION NO.1243/2001.

Abdul Wahab
Vs.
Chand Mohd. and ors.

Date of order : 9/4/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Zahoor Ahmed Naqvi for the petitioner.
Shri Amod Kasliwal for the respondents.

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Heard learned counsel for the parties.

The petitioner is challenging the order of the Rajasthan Wakf Tribunal, Jaipur dated 2/11/1000. According to the petitioner, the dispute is regarding agriculture lands of Khasra No.317 area 8 bigha 6 biswa, Khasra No.318 area 1 bigha 1 biswa and Khasra No.319 area 3 bigha 15 biswa, total 14 bigha 2 biswa which are situated in revenue village Aachari, Tehsil Chhoti Sadri, District Chittorgarh which has been recorded in the khatedari of Masjid Nimbaheda. According to the petitioner, the land was given to his father Moola Bux

by the Wakf Board on 22/8/1958 on rent of Rs.40/- per year. The rent was eventually enhanced to Rs.911/- in the year 1997. Shri Moola Bux died on 22/5/1979. Thereafter, the petitioner himself has been making payment of the rent on regular basis. The petitioner has made a huge investment in levelling of the boundary wall and in constrcution of the chhaparposh house. It was argued that the Tribunal has not appreciated either the facts or the law in correct perspective. The land in dispute was never given on Theka (contract) but it was given on rent and now the respondents have given it on contract (theka) for a period block of three years. The land was auctioned in the year 2001 and was given for cultivation to respondent No.2 who happens to be in relation of one of the members of the Muslim Wakf Committee. The auction proceedings were, therefore, not bonafide. According to the learned counsel for the

petitioner, since the petitioner is holding possesion of the land for almost five decades, therefore, the petitioner has got not only the preferential right to hold the land in dispute but is also entitled to certain concession in the rent amount.

On the other hand, Shri Amod Kasliwal, learned counsel for the Rajasthan Board of Muslim Wakfs opposing the petition argued that this Court while passing the ad-interim-order of status-quo way back on 5/2/2002 had made the order conditional by requiring the petitioner to regularly deposit the amount @ Rs.900/- per year but the petitioner has not paid a single peny ever since. He argued that the land was given to the petitioner merely on rent basis on payment of the amount every year but it was not allotted on permanent basis. Now, the respondents have decided to put it to auction after every block of three years and whoever is willing to pay

the highest bid in such auction, would be given the land for cultivation. According to him, the petitioner has not got any preferential right inasmuch as, in view of the conduct of the petitioner, he is also not entitled to any concession.

Having heard learned counsel for the parties and perused the impugned-order and other materials on record, I find that there is no dispute between the parties atleast in regard to the fact that the land which is subject-matter of dispute is a Wakf property.

Even if the land was earlier given to the father of the petitioner and subsequently to the petitioner on payment of annual amount which he prefers to call as rent rather than theka (contract), the decision of the respondents to now to put it to auction for a block year of three years at one go, cannot be described as outside their authority or without jurisdiction. It is however

always desirable that the due publicity should be given to the notice of auction and all interested to participate therein should be given opportunity to bid.

I, therefore, do not find any such errror in the order passed by the Wakf Tribunal which can be described as an error apparent on the face of record so as to call for any interference by this Court in exercise of its power of judicial review under Article 226/227 of the Constitution of India.

The writ petition being devoid of merit is dismissed with no order as to costs.

(MOHAMMAD RAFIQ), J.

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